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3 **SAGARIA LAW, P.C.**

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9 Nancy Boyd

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF OREGON – EUGENE DIVISION

12 NANCY BOYD,

13 CASE NO. 6:18-cv-00748

14 Plaintiff,

15 PLAINTIFF'S COMPLAINT FOR DAMAGES:

16 v.

17 Capital One, National Association, and

18 DOES 1 through 100 inclusive,

19 Defendants.

20

21 COMES NOW Plaintiff Nancy Boyd an individual, based on information and belief, to

22 allege as follows:

23 **INTRODUCTION**

24 1. This is an action for damages brought by an individual consumer for Defendant's

25 violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter

26 "TCPA"), which prohibits the use of automated dialing equipment when making calls to

27 consumers.

28 2. Plaintiff brings this action against Defendant Capital One, N.A. (hereinafter "Capital

One") for its abusive and outrageous conduct in connection with debt collection activity.

3. While may violations are described below with specificity, this Complaint alleges

violations of the statutes cited in their entirety.

4. The TCPA was designed to prevent calls like the ones described herein, and to protect

the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give

1 consumers a choice as to how corporate entities may contact them and to prevent the nuisance
2 associated with automated or prerecorded calls.

3 **JURISDICTION & VENUE**

4 5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §
5 227.

6 6. This venue is proper pursuant to 28 U.S.C. §1391(b).

7 **GENERAL ALLEGATIONS**

8 7. Plaintiff Nancy Boyd (hereinafter “Plaintiff”) is an individual residing in the state of
9 Oregon, and is a “debtor.”

10 8. At all relevant times herein, Defendant CAPITAL ONE engaged, by the use of mail,
11 email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer debt.”

12 9. At all relevant times, Defendant acted as a “debt collector.”

13 10. Plaintiff had taken out an unsecured loan with CAPITAL ONE in approximately 2015.

14 11. The loan Plaintiff took from Defendant CAPITAL ONE was extended primarily for
15 personal, family or household purposes and is therefore a “debt.”

16 12. Defendant CAPITAL ONE has been attempting to collect on a debt that originated
17 from monetary credit that was extended primarily for personal, family, or household purposes,
18 and was therefore a “consumer credit transaction.”

19 13. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant
20 CAPITAL ONE arising from what Plaintiff is informed and believes was a consumer credit
21 transaction, the money allegedly owed was a “consumer debt.”

22 14. Plaintiff is informed and believes that Defendant is one who regularly collects or
23 attempts to collect debts on behalf of themselves, and is therefore a “debt collector.”.

24 15. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the
25 accounts.

26 16. Plaintiff began making payments on the loan before she became financially unable to
27 keep up with the monthly payments.

28 17. Defendant CAPITAL ONE began contacting Plaintiff in January of 2018 to inquire
about the status of the loan and to collect on the payments that were no longer being made.

18. Plaintiff retained counsel to assist in dealing with CAPITAL ONE debt and to seek some type of financial relief.

19. Counsel for Plaintiff sent the letter of revocation to CAPITAL ONE on or about March 6, 2018

20. Plaintiff believes her revocation and representation letter was received by Capital One on March 9, 2018.

21. Plaintiff informed CAPITAL ONE that she was revoking her consent, if it was ever previously given, to be called on her telephone in March of 2018.

22. Plaintiff was frustrated that Capital One continued to make unsolicited calls on her cellular telephone after contacting Capital One to revoke her consent.

23. Plaintiff denies she ever gave her express consent to be contacted on her cellular telephone by automatic dialing machines and pre-recorded messages.

24. Defendant CAPITAL ONE continued to contact Plaintiff between approximately March 9, 2018 – April 28, 2018; the type of contact was through phone calls to Plaintiff on her cellular telephone.

25. Despite notice being sent Defendant continued to contact Plaintiff on her cellular telephone regarding collection of her outstanding debt.

26. Capital One ignored Plaintiff's letter of representation and continued to contact her for at least two months following receipt of Plaintiff's letter.

27. Despite being aware of Plaintiff's March 9, 2018 revocation Capital One continued to contact Plaintiff on her cellular telephone.

28. CAPITAL ONE's calls were frequent in nature and continued despite receiving written confirmation that she was revoking any consent that may have been previously given to be called on her cellular telephone.

FIRST CAUSE OF ACTION

(Violation of the TCPA)

(47 USC § 227)

(Against Defendant and Does 1-100)

29. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above as though fully set forth herein.

30. Since at least January of 2018 Defendant started calling Plaintiff's cellular telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

31. Plaintiff informed Defendant that she was revoking consent to be contacted by CAPITAL ONE in March of 2018.

32. CAPITAL ONE continued to call Plaintiff frequently since Plaintiff withdrew her consent to be contacted by an automatic dialing machine.

33. Defendant would contact Plaintiff frequently regarding payment on the accounts.

34. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver the collection messages without Plaintiff's prior express consent.

35. Defendant contacted Plaintiff on at least 42 (forty two) separate occasions after Plaintiff informed Defendant she did not wish to be contacted on her cellular telephone and withdrew any prior consent that may have been given.

36. All calls placed by Defendant to Plaintiff utilized an “automatic telephone dialing system” as defined by 47 U.S.C. §227(a)(1).

37. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

38. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C. §227(b)(3)(C) for each and every violation.
- b. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- c. Pursuant to 15 U.S.C. 1692(k) both actual damages and statutory damages in an amount to be proven at trial.

Dated: April 30, 2018

By: /s/ *Kyle Schumacher*
Kyle Schumacher
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of this matter by jury.

SAGARIA LAW, P.C.

Dated: April 30, 2018

/s/ Kyle Schumacher

Kyle Schumacher

Attorneys for Plaintiff